

LEACHCO, INC.
MOTION FOR INJUNCTION PENDING APPEAL
AND BRIEF IN SUPPORT

Exhibit 10

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

In the Matter of

Axon Enterprise, Inc.
a corporation.

DOCKET NO. 9389

**COMPLAINT COUNSEL’S UNOPPOSED MOTION TO WITHDRAW
THIS MATTER FROM ADJUDICATION**

On January 3, 2020, the Federal Trade Commission (“Commission”) issued an administrative complaint challenging Axon Enterprise, Inc.’s (“Axon”) consummated acquisition of another body-worn camera supplier, VieVu, LLC. On that same day, Axon initiated a lawsuit in the United States District Court for the District of Arizona raising, in part, constitutional claims regarding the Commission’s structure and administrative procedures. The district court dismissed Axon’s complaint due to lack of subject matter jurisdiction, the United States Court of Appeals for the Ninth Circuit affirmed, and in April 2023, the Supreme Court reversed the decision of the Ninth Circuit and remanded the case to the district court. *See Axon Enterprise, Inc. v. Fed. Trade Comm’n., et al.*, 452 F.Supp.3d 882 (D. Az. 2020), *aff’d* by 986 F.3d 1173 (9th Cir. 2021), *rev’d* by 598 U.S. ----, 143 S. Ct. 890 (2023). Commencement of the administrative evidentiary hearing was stayed in October 2020 during Axon’s appeals.

Following the Supreme Court’s decision, the district court ordered the Commission to respond to Axon’s complaint by June 9, 2023, and the parties jointly moved to stay the district court proceeding for a period of 60 days “to withdraw administrative Docket No. 9389 from Part

3 adjudication for a period of 60 days.” Stipulation, *Axon*, 2:20-cv-00014-DWL, Dkt. No. 56 (D. Az. June 8, 2023) (Exhibit A). The district court entered an order staying the district court proceeding for 60 days. Order (text entry only), *Axon*, 2:20-cv-00014-DWL, Dkt. No. 57 (D. Az. June 9, 2023).

To allow for discussion regarding the proper resolution of this matter, Complaint Counsel moves that the Commission issue an order withdrawing this matter from adjudication in Part 3 of the Commission’s Rules of Practice and suspending application of Rule 4.7 of the Commission’s Rules of Practice, 16 C.F.R. § 4.7 for 60 days from the date of this filing.¹ A draft of a proposed order granting the requested motion is attached.

Respondent Axon does not oppose this motion.

Dated: June 9, 2023

Respectfully submitted,

/s/ Nicole Lindquist
Nicole Lindquist
Peggy Bayer Femenella
Susan Musser
Bureau of Competition
Federal Trade Commission
400 7th Street, S.W.
Washington, D.C. 20024

Complaint Counsel

¹ The Commission in the past, in light of events relevant to issues in a pending adjudicatory matter, has authorized filing of a “motion to withdraw this matter from adjudication for purposes of discussing resolution of this matter, in which event the Secretary shall issue an order withdrawing this matter from adjudication and the application of Commission Rule of Practice 4.7, 16 C.F.R. § 4.7, shall thereby be suspended.” *In the Matter of New Balance Athletic Shoe, Inc.*, 120 F.T.C. 4, 1995 WL 17012636, **1 (July 10, 1995); *see also In the Matter of Rambus Inc.*, F.T.C. Dkt. 9302, 2009 WL 725994 (March 6, 2009) (withdrawing a matter from adjudication).

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[PROPOSED] ORDER

Having considered Complaint Counsel's Motion to Withdraw This Matter from Adjudication, Complaint Counsel's Motion is hereby granted. Accordingly,

IT IS ORDERED THAT this matter is hereby withdrawn from adjudication under Part 3 of the FTC Rules of Practice, 16 C.F.R. Part III for 60 days from June 9, 2023, for the purpose of considering the proper resolution of this matter in light of the multi-year stay of the evidentiary hearing and the Supreme Court's recent decision in *Axon Enterprise, Inc. v. Fed. Trade Comm'n., et al.*, 598 U.S. ----, 143 S. Ct. 890 (2023), and that the application of FTC Rule of Practice 4.7, 16 C.F.R. § 4.7, is hereby suspended.

By the Commission.

ORDERED:

April Tabor
Secretary

Date: _____

EXHIBIT A

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Christopher R. Hall
Assistant Branch Director

Hannah Solomon-Strauss (NY 5693890)
Trial Attorney

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Axon Enterprise, Inc.,

Plaintiff,

v.

Federal Trade Commission, et al.,

Defendants.

NO. 2:20-cv-00014-PHX-DWL

STIPULATION

The Parties have met and conferred regarding the Supreme Court's ruling and remand in this matter and stipulate and agree as follows:

- On or before June 9, 2023, the Parties will jointly request the Federal Trade Commission ("FTC" or "Commission") to withdraw administrative Docket No. 9389 from Part 3 adjudication for a period of 60 days.

1 2. The Parties request that this Court vacate the June 9, 2023 deadline for the
2 FTC to respond to Plaintiff Axon Enterprise, Inc.’s (“Axon”) Complaint
3 (Doc. 54) and pause further pleading in this case for the same 60-day
4 period.
5

6 3. On or before August 11, 2023, the Parties shall file with this Court a joint
7 status report and, if applicable, a stipulated schedule for pleading
8 amendments and summary judgment briefing on Axon’s constitutional
9 claims.
10

11 4. By agreement of the Parties, preliminary injunction briefing in this Court
12 will not be necessary if this case proceeds on Axon’s constitutional claims.
13

14 A proposed order accompanies this stipulation.

15 Dated: June 8, 2023

16 Respectfully submitted,

17 Brian M. Boynton
18 Principal Deputy Assistant Attorney General

19 Christopher R. Hall
20 Assistant Branch Director

21 /s/ Hannah M. Solomon-Strauss
22 Hannah Solomon-Strauss (NY 5693890)
23 Trial Attorney
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/s/ Pam Petersen (with permission)

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Attorneys for Plaintiff Axon Enterprise, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2023, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF System upon all counsel of record in the above-captioned case.

/s/ Hannah M. Solomon-Strauss

Hannah M. Solomon-Strauss

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Axon Enterprise, Inc.,

Plaintiff,

v.

Federal Trade Commission, et al.,

Defendants.

NO. 2:20-cv-00014-PHX-DWL

ORDER [PROPOSED]

[PROPOSED] ORDER

Upon consideration of the Parties' stipulation, it is hereby ORDERED that this case is stayed for a period of 60 days, and it is further ORDERED that the parties shall submit a joint status report not later than August 11, 2023, updating this Court on the status of this case.

Dated _____

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
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ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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Susan Musser

Counsel Supporting the Complaint